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MOTION OF PETITIONER FOR TAXATION OF COSTS TO RESPONDENTS DOWNING AND PHILLIPS

No. 184

IN THE

Supreme Court of the United States

OCTOBER TERM, 1953

The General Protective Committee for the Holders of Option Warrants of The United Corporation,
Petitioner,

v.

The Securities and Exchange Commission, The United Corporation, Edward R. Downing, Randolph Phillips, and 22,081 Stockholders of The United Corporation,
Respondents.

On Writ of Certiorari to The United States Court of Appeals for the District of Columbia Circuit

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MOTION OF PETITIONER FOR TAXATION OF COSTS TO RESPONDENTS DOWNING AND PHILLIPS

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MOTION OF PETITIONER FOR TAXATION OF COSTS TO RESPONDENTS DOWNING AND PHILLIPS.

1. Petitioner's petition for a Writ of Certiorari in the above entitled cause was filed with this Court on July 16, 1953 and granted on October 12, 1953. Argument was heard on the merits on December 2, 1953 and this Court rendered judgment on January 4, 1954 reversing the Court of Appeals for the District of Columbia Circuit in taking jurisdiction over the provisions of the voluntary plan of reorganisation of the United Corporation under the Public Utility Holding Company Act of 1935 which the Securities and Exchange Commission, in its order approving the plan, made operative on enforcement by a United States District Court. These provisions included those complained of by the Petitioner relating to the cancellation of the option warrants of Respondent, The United Corporation, (74 S. Ct. 261, 270,—U. S.—(1954)).

2. This Motion is filed pursuant to Rule 32, section 3 of the rules of this Court.

3. In this instance the respondent Securities and Exchange Commission and the respondent The United Corporation concurred in the position taken by the petitioner that the Court below lacked jurisdiction over the provisions of the plan of reorganization of The United Corporation providing for the cancellation of the option warrants represented by the petitioner, 74 S. Ct. 261, 265,—U. S.—(1954). Respondents Downing and Phillips not only invoked the jurisdiction of the Court below to enforce this provision of the plan of reorganization, but also supported the position taken by the Court below that it had jurisdiction over this provision of the plan on argument and in their brief (74 S. Ct. 261, 264,—U. S.—1954)).

4. Respondents Downing and Phillips made necessary the filing of the petition for certiorari in this cause and the subsequent proceedings required thereby and repeatedly took the position that they were the only parties in interest adverse to Petitioner (See telegram of Randolph Phillips to this Court requesting additional time, dated November 30, 1953).

WHEREFORE, petitioner prays:

1. That this Court hold inapplicable its Rule 32, section 5, (which merely provides that, with certain exceptions, "no costs shall be allowed in this court either for or against the United States or an officer or agency thereof") since the United States is not an adverse party in interest in this cause.

2. That this Court include in its mandate to the Court of Appeals for the District of Columbia Circuit a provision for the payment to petitioner of the costs of this proceeding by respondents Downing and Phillips, in the

amount of $1591.16 including the docket fee in the amount of $100; the costs of the printing of the transcript of the record in the Court below on petition for certiorari in the amount of $340.00, and the costs of the printing of the transcript of the record in this Court in the amount of $1151.16.

Respectfully submitted,

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FEBRUARY 3, 1954